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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
WILLIS, MICHAEL A	
ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 07/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/648,376	Applicant(s) CANNELL ET AL.	
	Examiner Michael A. Willis	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with th correspond nce address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 May 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-52* is/are pending in the application.

4a) Of the above claim(s) *4 and 27-49* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3, 5-26, 50-52* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Applicant's amendment of 22 May 2002 is entered. Claims 8, 35, and 52 are amended. Claims 1-52 are pending. Claims 4 and 27-49 are withdrawn from consideration as directed to a nonelected species/invention. Any previous rejections that are not restated in this Office Action are hereby withdrawn. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Response to Arguments

Claim 25 is rejected under 35 USC 112, 2nd paragraph, for being indefinite for reasons as stated previously. The rejection is due to the phrase "protein derivatives". Applicant argues that one of ordinary skill in the art would understand what is meant by the term "derivatives" when analyzed in light of the claim language, the content of the specification, and the teachings of the prior art. In support of the argument, applicant provides a dictionary definition of the noun "derivative" as a "compound derived or obtained from another and containing the essential elements of the parent substance". Applicant's arguments are not convincing because in the current case, it is not clear from the specification what elements are essential to proteins. For example, is the essential element of the parent protein the molecular weight, the in vivo function, the partition coefficient, the hydrolytic stability, or some other aspect of the parent protein? The specification is silent with respect to this issue. The only mention of protein derivatives occurs on page 42, line 4, where a listing of adjuvants that can be included in formulations includes "proteins and protein derivatives". It is not clear to the examiner

if "protein derivatives" include methylated proteins, acetylated proteins, acylated proteins, hydrolyzed proteins, polypeptides, amino acids, or protein metabolites such as urea and carbon dioxide.

Claims 50-52 are rejected under 35 USC 102(b) as being clearly anticipated by Laurent et al (WO 97/15271) as understood by the English language equivalent (US Pat. 6,251,378) for reasons as stated previously. Applicant argues that Laurent discloses a dye composition comprising the ceramide or glycoceramide **in** an oxidative dye composition while claims 50-52 claim separate compartments for the (glyco)ceramide and chemical treatment composition, where applicant suggest that the chemical treatment composition is e.g. a dyeing composition. Applicant's argument is not convincing, however, because the composition in the second compartment is only defined by the claims as a composition for the chemical treatment of keratinous fibers. While claim 51 further defines the composition in the second compartment as "chosen from a dyeing composition, a bleaching composition, a permanent waving composition, and a relaxing composition", the disclosure of Laurent meets this limitation by stating "a second compartment of which contains the oxidizing composition as defined above" where the oxidizing agents include hydrogen peroxide (see col. 8, lines 49-58).

Claims 1-3, 5-26, and 50-52 are rejected under 35 USC 103(a) as being unpatentable over Laurent et al (WO 97/15271) as understood by the English language equivalent

(US Pat. 6,251,378) in view of Cauwet et al (US Pat. 5,656,258) for reasons as stated previously.

Applicant argues that the references lack motivation to combine because the compositions of Laurent are for use in oxidation dyeing of hair, while Cauwet teaches compositions for improving the disentanglement of hair rather than oxidation dyeing of hair. Thus, there is no motivation to combine the references, but at most such a modification would have been obvious to try. Applicant's argument is not convincing. Laurent clearly teaches that the dye composition can also contain various adjuvants conventionally used in compositions for dyeing the hair (see col. 8, lines 1-11). Furthermore, Cauwet clearly teaches that the disentangling compositions are particularly useful in compositions for dyeing hair (see col. 6, lines 11-25). The motivation for modifying compositions containing hexadimethrine chloride taught by Laurent comes from the teachings of Cauwet, which disclose synergistic results from the addition of MERQUAT 280 to hexadimethrine chloride for the benefit of improving the disentanglement and softness of hair.

Applicant further asserts that the Examiner has not provided any objective evidence that would have led one of ordinary skill to have a reasonable expectation of success. Applicant's mere assertion is not convincing because both references encompass compositions for dyeing hair, and there is nothing in Laurent to indicate a particular sensitivity to MERQUAT 280. On the contrary, Laurent clearly teaches that the dye composition can also contain various adjuvants conventionally used in compositions for dyeing the hair (see col. 8, lines 1-11). Such adjuvants include anionic,

cationic, nonionic, amphoteric, or zwitterionic polymers or mixtures thereof (see col. 8, lines 5-6). MERQUAT 280 is within the scope of such adjuvants. Therefore, the combination of references meets the requirement for a reasonable expectation of success.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael A. Willis whose telephone number is (703) 305-1679. The examiner can normally be reached on alternate Mon. and Tues. to Fri. from 9am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie can be reached on (703) 308-4612. The fax phone numbers

for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

Michael A. Willis
Examiner
Art Unit 1617

July 23, 2002

MICHAEL G. HARTLEY
PRIMARY EXAMINER